2007-05780/

FOIP FOLIO

SASKATCHEWAN

February 2007

REPORT TO BOARD OF INTERNAL ECONOMY

On February 12, 2007 the Office of the Information and Privacy Commissioner (OIPC) presented its estimates to the Board of Internal Economy (an all-party committee of the Legislative Assembly) that oversees our operations. This included discussion of our revised Business Plan for 2006-2009, a review of our key performance measures for 2006-2007, including those measures that we achieved and those we failed to achieve. We advised the Board that our plan is to shift our efforts from 60% of our time spent on education and advice and 40% on formal reviews and investigations to 40% on education and advice and 60% on formal reviews and investigations. The Hansard (verbatim transcript) of the Board presentation will be available at www.legassembly.sk.ca. Our 2006-2009 Business Plan is available at www.oipc.sk.ca under the *What's New* tab.

BILL 20 *THE GUNSHOT AND STAB WOUNDS MANDATORY REPORTING ACT*

On February 5, 2007 our office made a presentation to the Standing Committee on Intergovernmental Affairs and Infrastructure in Saskatoon. This involved our analysis of Bill 20 and seven suggested amendments to Bill 20. We also provided the Committee members with a binder of resources for their consideration. You can access our presentation, the seven proposed amendments and the relevant resources at our website, www.oipc.sk.ca under the *What's New* tab.

OIPC 'LIBRARY'

For the past three years we have been assembling a library of access and privacy books, periodicals and materials. We have no capacity to lend these out but anyone is welcome to come to our office at 503 - 1801 Hamilton Street to review these materials. Before doing so, please contact Kara at 787-8350 to arrange a suitable time.

HOW DO WE INTERPRET FOIP, LA FOIP AND HIPA?

We sometimes get questions as to how we interpret the three laws that the OIPC oversees. Why does our interpretation sometimes differ from the dictionary or ordinary meaning of certain words? The answer is that the OIPC, consistent with other privacy and access oversight agencies in Canada, follows the "modern principle" in interpreting these laws. This has been described by the Alberta Information and Privacy Commissioner, when quoting the Supreme Court of Canada, as follows:

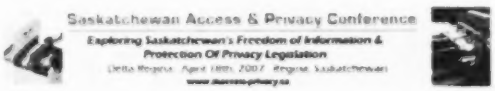
> *The "modern principle" says I must read the words in an enactment "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament"*[1]

In Saskatchewan, we are also guided by section 10 of *The Interpretation Act* that provides:

> *10 Every enactment shall be interpreted as being remedial and shall be given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects.*

To give effect to this modern principle of statutory interpretation, we consider the way that the courts have been treating access to information and privacy and the *Charter of Rights and Freedoms* as well as the purpose and unique nature of these three laws. We are guided also by the approach taken by other Information and Privacy Commissioners since such laws across our nation have far more in common than they exhibit differences. It will be useful to recognize that in the course of more than 20 years of Canadian experience with privacy and access law that certain terms have acquired particular meanings. We encourage those in our Saskatchewan 'access and privacy community' to become familiar with the way we are interpreting each of these three laws. You can do so by reviewing the case Reports and Annual Reports on our website, www.oipc.sk.ca. If you have questions please call our office at 787-8350 or toll-free at 1-877-748-2298.

CONFERENCE UPDATE: A WEALTH OF KNOWLEDGE


Saskatchewan Access & Privacy Conference
Exploring Saskatchewan's Freedom of Information &
Protection Of Privacy Legislation

If you need convincing that attending the upcoming Prairie Health Information Privacy Day or the Saskatchewan Access and Privacy Conference on April 16, 2007 and

[1] Alberta OIPC Order H2006-002, [28]. See also Ontario IPC Order PO-1879, British Columbia OIPC Ruling File No. 15884, Alberta Adjudication Order #3 (Review Numbers 2170 and 2234).

CONFERENCE UPDATE: A WEALTH OF KNOWLEDGE (CONT'D)

April 18, 2007 respectively will be worthwhile, consider this list of renowned speakers confirmed for both events:

- Jennifer Stoddart, Privacy Commissioner of Canada;
- Frank Work, Q.C., Office of the Information and Privacy Commissioner of Alberta;
- Irene Hamilton, Ombudsman, Manitoba Ombudsman Office;
- Gary Dickson Q.C., Saskatchewan Information and Privacy Commissioner;
- Jann Lynn-George, Manager, Legislation and Policy, Alberta Government Services, Access and Privacy Branch;
- Gail Mildren, General Counsel, Civil Legal Services, Manitoba Justice;
- Dan Farr, VP Training & Educational Services, Corporate Investigation Services;
- Wendy Robillard, Senior Manager, Information Policy and Compliance, Alberta Health & Wellness;
- Darcy McGovern, Crown Counsel, Public Law Division, Saskatchewan Justice;
- Gail Perry, Manager Research & Education, Manitoba Ombudsman Office;
- John Swiniarski, Assistant Registrar, College of Physicians and Surgeons of Alberta;
- Leroy Brower, Director HIA, Office of the Information and Privacy Commissioner of Alberta;
- Landis Esposito, Chief Privacy Officer, Winnipeg Regional Health Authority;
- Dawn Lake, Information Access and Privacy Consultant, Palliser Health Region;
- Bryan Salte, Associate Registrar, College of Physicians and Surgeons of Saskatchewan;
- Patricia Kosseim, General Counsel, Office of the Privacy Commissioner of Canada;
- Duane Mombourquette, Executive Director, Access & Privacy Branch, Saskatchewan Justice;
- Mike Tolfree, Manager of Privacy & Security, Calgary Health Region;
- Jayden Stephens, Privacy Officer, Saskatoon Health Region;
- Heather McLaren, Director, Legislative Unit, Manitoba Health; and
- Robert Martin, Privacy & Security Manager, Alberta Health & Wellness.

In addition to these events, you may register to attend one or more optional workshops (limited space and additional costs) scheduled for Tuesday, April 17, 2007 such as *Conducting Privacy Impact Assessments* with facilitator Rick Klumpenhouer, Manager Consulting Services, Cenera. More information on the workshops is available at the following link: http://verney.ca/sapc2007/workshop.php.

DISCLOSURE OF PERSONAL HEALTH INFORMATION TO KEEP SOMEONE SAFE

Some trustees have requested clarification as to how broadly section 27(4)(a) of *The Health Information Protection Act* (HIPA) will be construed by the OIPC in our HIPA oversight role. That section provides:

> 27(4) *A trustee may disclose personal health information in the custody or control of the trustee without the consent of the subject individual in the following cases:*
>
> *(a) where the trustee believes, **on reasonable grounds**, that the disclosure will avoid or minimize a danger to the health or safety of any person;...*
> [emphasis added]

It is common in all access and privacy laws to either provide that disclosure should occur to avoid harm to anyone or that access should be denied to an applicant for the same purpose. Criteria used in other provinces[2] to make this decision include:

a) must be a reasonable expectation of probable harm;
b) harm must constitute damage or detriment and not more inconvenience; and
c) must be a causal connection between disclosure and the anticipated harm.

Generally, this means the trustee must make an assessment of the risk and determine whether there are reasonable grounds for concluding there is a danger to the health or safety of any person. That assessment must be specific to the circumstances of the case under consideration. This would involve the responsible trustee exercising the kind of professional judgment and experience common to Saskatchewan health care professionals.

In addition, all of the sixteen circumstances in section 27(4) are secondary disclosures (i.e. for a purpose unrelated to diagnosis, treatment or care of the patient). That means each is an exception to the principle that any disclosure of personal health information for a secondary purpose should require the express or implied consent of the patient. This principle is reflected in the Canadian Medical Association Privacy Code and other instruments. Therefore section 27(4)(a) should be given a narrower not a wider interpretation.

MARCH IS FRAUD AWARENESS MONTH

Recent massive data breaches in Canada are an urgent wake-up call for organizations to ensure they have strong privacy safeguards in place. In Saskatchewan the OIPC has urged the provincial government to put into our public sector privacy laws (FOIP and LA FOIP) a clear obligation on all public bodies to take reasonable safeguards to protect the personal information and personal health information in their

[2] Alta OIPC Orders 96-003 and 96-004 and British Columbia OIPC Order PO6-02, [48]

MARCH IS FRAUD AWARENESS MONTH (CONT'D)

control. We have suggested that this should be reinforced by a specific offence provision and a substantial penalty in the case of conviction. These are common features of all modern privacy laws in Canada. We have also urged in past Annual Reports that administrative tribunals in Saskatchewan need to reassess the kind of personal information they publish on the Internet.

At the same time, it is important for individuals to realize the important role they play in fighting identity theft. Identity theft is when someone uses your personal information without your knowledge and consent to commit a criminal act such as fraud or theft. There are always things that each of us could do to better protect our own personal information. This might include destroying documents, such as by shredding, containing sensitive information such as credit card numbers and social insurance numbers. It is also useful for individuals to routinely monitor bank statements and credit card statements. You can also ask credit bureaus for a copy of your credit report.

For more information on identity theft, go to the Office of the Privacy Commissioner of Canada website, www.privcom.gc.ca.

FUTURE EVENTS

March 12-13, 2007 – *Electronic Health and Medical Records* – Four Seasons Hotel, Vancouver, British Columbia (visit www.insightinfo.com for details)

April 16, 2007 – *Prairie Health Information Privacy Day, 2007* – Delta Regina, Regina, Saskatchewan (visit www.verney.ca/phipd2007 for details)

April 17, 2007 – *Optional Access and Privacy Workshops* – Delta Regina, Regina, Saskatchewan (visit http://verney.ca/sapc2007/workshop.php for details)

April 18, 2007 - *Saskatchewan Access & Privacy Conference 2007 – Exploring Saskatchewan's Freedom of Information and Protection of Privacy Legislation* – Delta Regina, Regina, Saskatchewan (visit www./verney.ca/sapc2007 for details)

April 18-19, 2007 – *Privacy and Security in Government Information* – Ottawa, Ontario (visit www.federatedpress.com/pdf/PSGI0704-E.pdf for details)

April 26-27, 2007 – *Anti-Money Laundering* – The Sutton Place Hotel, Toronto, Ontario (visit www.CanadianInstitute.com for details)

May 1-4, 2007 – *17th Conference on Computers, Freedom & Privacy* – Montreal, Quebec (visit www.cfp2007.org/live for details)

May 2, 2007 – *Privacy and Data Protection Canada 2007* – Toronto, Ontario (visit www.transatlantic-events.com for details)

FUTURE EVENTS (CONT'D)

May 30-31, 2007 – *Privacy Compliance – Meeting Your Obligations and Challenges* – Toronto, Ontario (contact 1-877-927-7936 for details)

TO CONTACT US:

Office of the Saskatchewan Information and Privacy Commissioner
503 - 1801 Hamilton Street
Regina, Saskatchewan, S4P 4B4
Telephone: (306) 787-8350 / Toll Free: 1-877-748-2298
Fax: (306) 798-1603
E-mail: webmaster@oipc.sk.ca
Website: www.oipc.sk.ca

If you wish to subscribe to the Saskatchewan FOIP FOLIO, please send your e-mail address to webmaster@oipc.sk.ca